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The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.

Privilege-to-Own-or-Operate Radio Receiving Set License Tax Held Unconstitutional.

The South Carolina Radio Tax Act, approved March 31, 1930, provides for an annual license tax of from 50c to $2.50 (depending on the cost) for the privilege of owning or operating a radio receiving set; penalty for failure to pay, $50; tax and penalty a lien on the set. A broadcasting company, foreign to South Carolina, broadcasting at Charlotte, North Carolina, brought suit (a Federal three-judge court suit) to enjoin the South Carolina state officials from enforcing collection of the tax, on the ground that the tax interferes with and burdens interstate commerce. The United States District Court, E. D. South Carolina, declares the taxing act null and void and grants an interlocutory injunction (Station WBT, Inc. vs. Poulnot et al., decided January 17, 1931). Against objection the court assumed jurisdiction holding that plaintiff had standing to bring the suit because so directly affected by the burden of the tax. The court says that there can be no doubt that communications by radio constitute interstate commerce—in the present state of the art necessarily so, and that to impose a license tax on ownership or operation of receiving sets—for revenue purposes (not a fee incident to a police power regulation)—not a property tax, is to unconstitutionally interfere with and burden interstate commerce.

Kenneth Kingsley
President.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

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Contents for March

Talks on Foreign Corporations

The maintenance of an office in a foreign state is an important factor to be considered in deciding whether a corporation is "doing business" therein, in a manner requiring qualification. In fact it may be stated that the maintenance of an office for the transaction of business makes out a prima facie case that the corporation is "doing business" within the state. To rebut the inference that maintenance of an office alone requires qualification, it may be shown that all of the business transacted there constitutes interstate commerce, but if the office is used in part for interstate commerce and in part for intrastate commerce the foreign corporation is subject to the state laws.

In the case of Cheney Bros. Co. and various others against Massachusetts, 246 U. S. 147, the Supreme Court of the United States considered the transactions of several corporations. In one instance a Connecticut corporation (Cheney Bros. Company Case) maintained in Boston an office, with one office salesman and four travelling salesmen, in which office a stock of samples, but no other goods, was kept. No collections were made. Orders were subject to approval at the home office and goods were shipped directly from there to the customers. The Supreme Court of the United States, in reversing the judgment of the lower court said: "We do not perceive anything in this that can be regarded as a local business as distinguished from interstate commerce." In another (Lanston Monotype Company Case) the corporation was doing business because it kept at its office stock to repair and replace broken parts of machines, this being held local business. In still another (Champion Copper Company Case) the corporation was doing business in the state by maintaining its treasurer's office in Boston, for general direction of the deliveries of its product, keeping a record of sales and deliveries, paying salaries, distributing dividends and holding directors' meetings, even though it owned a mine outside of Massachusetts and sold its product exclusively outside of the Commonwealth.

To sum up, it may be said that the mere maintenance of a soliciting office, such as the one maintained in the Cheney Bros. Case is generally considered as not doing business. However, if the office is not a mere soliciting office, but is in fact a principal, managing, financial, etc., office, or those in charge are not soliciting agents, but are vested with a wide discretion in the matter of entering into binding contracts, recommendations as to credit, investigation and discussion of claims, and are allowed to do whatever is necessary in the way of sales and service without reference to the home office, then the corporation may experience grave difficulties should it fail to qualify in the state wherein the office is located and qualification is the safest and best procedure.

Domestic Corporations

Delaware.

If holders of proxies are present at stockholders meeting the shares represented thereby are to be counted as present for quorum establishing purposes though the proxies be not presented. The decision of the Delaware Court of Chancery, New Castle County, in this case, holding as stated in the foregoing heading, is reported at 151 A. 223 and is digested at some length in THE CORPORATION JOURNAL for June, 1930, page 198. The Supreme Court of Delaware affirms the judgment (for the Guth faction). Briefly: at an annual meeting of stockholders of a Delaware corporation for election of directors a majority of the voting stock was represented, by presence of stockholders and by proxy holdings (this fact was established by subsequent court action); after much discussion (on the question of organizing the meeting, and otherwise) the "Miller faction" withdrew from the meeting taking with them the proxies held by them without having presented such to the meeting; those remaining in the meeting (the "Guth faction") proceeded to elect directors. Counting the withdrawn proxies a quorum had been present; otherwise not. As stated, it was established that a quorum had been present; that the withdrawn proxies though not presented by the holders had, in fact, been present: and it is held that the rule in the Hexter case, 145 A. 115, THE CORPORATION JOURNAL for May, 1929, page 415—a quorum having been present business may be conducted by less than a quorum if the lack of a quorum is caused by the withdrawal of stockholders from the meeting for no justifiable reason—applies equally when the lack of a quorum is caused by withdrawal, without justification, of stockholders and of proxies. "If the owners of the stock, the principals, could not break a quorum by withdrawing from the meeting, certainly their agents could not do it by withdrawing." The election of the "Guth faction" directors is held valid. Duffy vs. Loft, Incorporated, Commerce Clearing House Court Decisions Reporting Service, Requisition No. 34029. Daniel O. Hastings and Ayres J. Stockly (of Hastings, Stockly and Morris), of Wilmington, for appellant. Clarence A. Southerland (of Ward and Gray), George N. Davis, and Charles C. Keedy, all of Wilmington, and Arthur F. Driscoll (of O'Brien, Malevinsky & Driscoll), of New York, N. Y., for appellee (the "Guth faction").

Respective rights of stockholders to share in liquidation distribution on winding up of insolvent corporation. The following quoted matter is taken from THE CORPORATION JOURNAL for October, 1930: "Here, creditors' claims have been liquidated and satisfied. There are common and preferred stockholders; some of these paid a premium above par for their stock; some have paid a part only of their respective subscriptions. The preferred stock calls for cumulative dividends. On winding-up the preferred stock is to receive payment in full at par plus accrued but unpaid dividends; thereafter the common stock only shares in the distribution. The capital paid in has been depleted; at no time

have profits been earned and at no time has there been a surplus above liabilities and capital. Petition by receiver to determine respective rights of stockholders to share in the fund remaining in his hands for distribution to stockholders. The Delaware Court of Chancery (151 A. 228) holds: (1) That those who paid a premium are not to share in proportion to what they paid but in proportion, only, to the par value of their shares; (2) that those shareholders who have not paid in their subscriptions in full should, in effect, pay in, in full, they then to share, pro rata, in the thus augmented fund made available for distribution (actual paying in is not essential, a simple arithmetical calculation being all that is necessary to establish the respective equities); and (3) that preferred stockholders are entitled to no dividends but to payment in full at par, only, arrears of cumulative dividends, or unpaid dividends accrued, being held to mean such dividends as could have been paid from profits earned by the going concern—and at no time were there any such profits." The Supreme Court of Delaware affirms the Chancellor's determination on points (1) and (2), but disagrees on point (3), holding that the preferred stockholders, by the terms of the contract under which they became such, are entitled to cumulative dividends, or cumulative returns (at 7 per cent per annum), before common stock receives anything, from any funds legally distributable to stockholders (profits, while the corporation is a going concern; assets distributable to shareholders, on dissolution), and so are to receive from the funds in his hands available for distribution to shareholders in addition to the par value of their preferred stock, 7 per cent per annum on the amount thereof, to the time of the appointment of the receiver—accrued, unpaid, 7 per cent dividends. Penington vs. Commonwealth Hotel Const. Corp., and McAtamney vs. Broadway, etc. Realty Corp., Commerce Clearing House Court Decisions Reporting Service, Requisition No. 34752. Charles C. Keedy, of Wilmington, for the receiver.

Florida.

Act of 1929 requiring the making and filing of tax returns by corporations held unconstitutional. The title of the act in question (Chapter 14571, Laws of Florida, approved June 29, 1929—Extra session—) reads "An Act requiring all persons, associations of persons, firms or corporations owning or having the control, custody or management of real and tangible personal property, to make and file tax returns, and to that end providing certain forms and records; *prohibiting the recording of deeds and bills of sale unless the post-office address of the grantee is stated therein;* prescribing the oath, etc., etc." The act itself embodies provisions relating to the foregoing matter printed in italics as well as to that covering the tax returns. The state constitution provides that "each law shall contain but one subject which shall be clearly expressed in its title.' The Supreme Court of Florida holds the entire act to be unconstitutional and void since "not only does the title of the act contain two distinct and improperly connected subjects, but the same is true of the body of the act, which deals with both

such subjects." One subject is held to be entirely outside of the legitimate scope of the other, there being nothing in common between the two. Colonial Inv. Co. vs. Nolan, Tax Assessor, et al., 131 So. 178. D. H. Doig, George C. Bedell, and Chester Bedell, all of Jacksonville, for appellant. Atty. Gen., and Asst. Atty. Gen., for appellees.

Illinois.

Relief to dissenting stockholder on sale of approximately "all" of corporation's property. The Illinois law provides that in event a stockholder dissents to a sale or other transfer of "all" of his corporation's assets to another corporation the vendee corporation is obligated to purchase his shares at a price equal to their fair value, with interest. If the fair value and interest be not paid the stockholder may file a petition in the appropriate circuit court for a determination of fair value and for judgment against the vendee for the amount thereof and interest. Here, the requisite number of stockholders consented to the sale to a corporation by their corporation, engaged in the publication of trade magazines, of its assets, tangible and intangible, essential to the future business and as a going business, except paper stock on hand, and except accounts or bills receivable. A dissenting stockholder petitioned a circuit court for relief as provided by the statute as stated above. The petition having been dismissed for "want of equity" appeal was taken to the Appellate Court, First District, Second Division, which reverses and remands with directions for a trial on the merits. The decision below rested on the facts that the statute provides for relief to a dissenting shareholder in the case of the sale of "all" of a corporation's assets, and that here "all" of the assets were not sold. The appellate court believes that if the word "all" is to be given its literal meaning there would be little or no protection afforded to the rights of minority stockholders objecting to sales, and that the intent of the legislature in enacting the law provisions in question was to make the rule applicable to such a sale as is alleged in the plaintiff's petition. Fisk vs. Toys & Novelties Publishing Company et al., 259 Ill. App. 368. W. Morton Carden and Dickinson, Smith, Farrell & Wham, of Chicago (W. Morton Carden and Benjamin Wham, of counsel), for appellant. Musgrave, Oppenheim & Price, of Chicago, for appellees.

Louisiana.

Separate corporate entities are disregarded here, a subsidiary corporation being considered as a branch, merely, of the parent. Plaintiff is a New York corporation; it owns all the stock of a Tennessee corporation (of the same name) which, in turn, owns all the stock of a Texas corporation (still of the same name). The Texas corporation sued the defendant on open account; the New York corporation owed defendant an amount greater than that sued for; each account as claimed, is correct, admittedly. Defendant contended that the one account was extinguished by the other; and, further asked judgment for the excess of the amount owed to it over that owed by it. The Louisiana Court of Appeals, Second Circuit, reverses the court below which

found for plaintiff, decrees that plaintiff's demands be rejected and orders judgment in reconvention for defendant in the sum of the excess referred to. The Court is convinced by the evidence that "the affairs of the plaintiff were so organized and controlled and its affairs were so conducted as to make it a mere instrumentality or adjunct of the parent corporation in New York." The question of separate corporate entities and when courts may look through form to substance and ignore mere colorable separate entities is quite fully discussed. Lucey Mfg. Corporation vs. Oil City Iron Works, 131 So. 57. Pugh, Grimmet & Boatner, of Shreveport, for appellant. D. C. Scarborough, Jr., of Shreveport, for appellee.

Michigan.

Failure to file acceptable annual report, amended report being subsequently accepted, nunc pro tunc, does not cause corporate powers to be suspended. It will suffice, for present purposes, to say that this is an action to recover an amount alleged to be due on account of goods sold. One of the defenses was that the plaintiff corporation had failed to file a proper annual report and that because of such failure its corporate powers were suspended and that it may not recover since the sale of the goods in question was made at a time it was thus in default. The Supreme Court of Michigan sustains the court below which found for the plaintiff. The particular report that was questioned when filed (and fee paid) proved to be unsatisfactory to the Secretary of State who, retaining both return and fee advised the corporation of the defect (a mere irregularity, says the court) and on receiving a revised return stamped it "Approved and accepted Nov. 9, '26. Filed Sept. 7, 1926." The Secretary has power to grant an extension. The court says that "there evidently was not a full compliance with the statutory requisites for granting an extension of time; but even if it be assumed there was a default, we think the action taken by the secretary of state should be construed as the granting of an extension of time as provided by the statute. The defense urged is technical and should not be unnecessarily extended to enable one to escape liability." R. C. Mahon Co., vs. Moline et al., 233 N. W. 431. Shapero & Shapero, of Detroit, for appellants. Griffin, Heal & Emery, of Detroit, for appellee.

Minnesota.

President of corporation held guilty of contempt of court for failure to carry out court's command directed to the corporation. A default judgment was entered against a corporation "to dismiss certain cross actions pending in Texas." In due course the president of the corporation, "the sole surviving officer and majority stockholder thereof" was required to show cause why he should not be adjudged in contempt of court for failing to cause the filing of the dismissals. He was found guilty and it was ordered "that he be committed to jail until he purge himself of the contempt." The Supreme Court of Minnesota affirms, and says: "The (original) judgment was against defendant

(corporation) only. It did not, as is usual in such cases, name the officers, agent, or employees of defendant corporation. But a lawful judicial command to a corporation is in effect a command to its officers who may be punished for disobedience to its terms. Such a judgment is not merely addressed to the corporation entity, but it is a command to each official whose consent or co-operation may be necessary to the completion of the corporate act which is commanded. * * * When the executive or managing officer of such a corporation has knowledge of such commanding judgment (here he had been served with a copy thereof), and fails to take appropriate action within his power for the performance of the corporate duty, he, no less than the corporation, is guilty of disobedience and may be punished for contempt." Child et al. vs. Washed Sand & Gravel Co., 233 N. W. 586. Ohman, Fryberger & Wangaard, of Minneapolis, for appellants. Child & Child, of Minneapolis, for respondents.

New York.

Law providing that "every pharmacy shall be owned by a licensed pharmacist" held unconstitutional. Section 1354 of the New York Education Law provides that "Every pharmacy shall be owned by a licensed pharmacist and every drug store shall be owned by a licensed druggist"; rights saved to corporations owning pharmacies and drug stores within the state at the time of the passage of the restricting act. Section 1352 of the Education Law gives to the State Board of Pharmacy power of regulation and Section 1353 enunciates the qualifications necessary for admission to examination for a license which are such as are applicable to natural persons only. The plaintiff here is an individual seeking a declaratory judgment that "so much of sections 1352 and 1354 which restricts the ownership of pharmacies to licensed pharmacists, is violative of the state and Federal constitutions." The New York Supreme Court, Erie County, saying that all arguments now presented in support of the New York law were made before and considered by the United States Supreme Court in deciding, under the Pennsylvania law, Liggett vs. Baldridge, 278 U. S. 105 (THE CORPORATION JOURNAL, January, 1929, page 322), grants plaintiff's motion for judgment "declaring that so much of sections 1352 and 1354 of the Education Law which forbid the issuance of a certificate of ownership by anyone not a licensed pharmacist, to be unconstitutional, as in contravention of the 14th Amendment of the Federal Constitution." Pratter vs. N. Y. State Board of Pharmacy, decided January, 1931, not yet officially reported. Philip Halpern, of Buffalo, for the motion. Hamilton Ward, Atty. Gen. (Henry S. Manley, Deputy Atty. Gen.) of Albany, opposed. E. C. Brokmeyer, of Washington, D. C., for the National Association of Retail Druggists, amicus curiae.

North Carolina.

Buncombe and a libel suit. Defendant is a North Carolina corporation having its principal place of business in Henderson County of that state. In an action against it brought in Buncombe County by a nonresident of the state for alleged libel defendant moved to remove

the cause to Henderson County. The Supreme Court of North Carolina affirms the judgment below granting the motion. The court says: "For the purpose of suing and being sued the principal place of business of a domestic corporation is its residence. If the plaintiff is a nonresident of the state, the residence of the defendant is the proper venue in actions of this kind." McCue vs. Times-News Co., Inc., 156 S. E. 129. Joseph W. Little and Wm. F. Toms, both of Asheville, for appellant. Thomas H. Franks and Shipman & Arledge, all of Hendersonville, for appellee.

Foreign Corporations

California.

Contract made in California in intrastate commerce by unqualified foreign corporation was void on its behalf and was not validated by subsequent qualification, under old law. At the time this action was brought, in 1927, the California law provided that failure on the part of a foreign corporation doing intrastate business in the state to qualify before engaging in such business denied it the right to prosecute or defend suits in the state courts concerning its property or transactions in the state and further provided that any contract affecting its personal liability or relating to property within the state entered into while unqualified shall be void, as to it. (Now, since 1929, qualification before bringing suit suffices and there is no reference in the pertinent law to "void" contracts.) Action is by a Minnesota corporation not qualified to do business in California at the times (in 1923-24) a contract was entered into and performed in California, admittedly in intrastate business, to recover an amount alleged to be due under the contract. The penalty provisions referred to were embodied in a 1915 Act as amended in 1923. The amended 1915 Act was repealed in 1927, its provisions being reenacted (in the Code) simultaneously without substantial change. Subsequently the plaintiff corporation qualified in California and then brought this action (there had been a previous suit). The California Supreme Court affirms the judgment below for defendant. The court holds (there is extensive discussion of "void" and "voidable" as determined by the courts of other jurisdictions under similar laws or those omitting "void" from their terms, with citations to many cases) that under the then California law such a contract was absolutely void as to the foreign corporation, that no action could be maintained by it thereon, that subsequent qualification did not validate the contract so as to permit the bringing of suit in connection therewith, and—that the repeal of the old 1915 law (in effect at the time the contract was made and performed, but repealed in 1927 before this suit was brought) is of no assistance to plaintiff inasmuch as substantially the same law provisions were simultaneously reenacted, "the repeal and reenactment merely operating to continue them in effect." Incidentally, defendant had paid in full, but (unauthorizedly, so plaintiff asserts), to an agent who failed to account to his principal. Perkins

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Mfg. Co. vs. Clinton Const. Co., not yet officially reported (U. S. Daily, Jan. 28, 1931, page 8). Gaylord & Smith, Willard P. Smith, and W. L. Southwell, all of San Francisco, for appellant. Ernest K. Little, of San Francisco, for respondent.

Right of qualified foreign corporation to sue in California courts on property right acquired in home state before qualification in California. Plaintiff, a Nevada corporation, acquired by delivery in Nevada an assignment of certain personal property including a chose in action, the transferors residing in California. Subsequently the corporation qualified in California and thereafter brought an action to recover on the chose in action. The trial court granted the motion to dismiss on the ground that the court was without jurisdiction. In a mandamus proceeding the California District Court of Appeal, First District, Division 2, directs that a preemptory writ to proceed with the trial be issued as prayed. The court says: "The assignment having been delivered in the state of Nevada, the 'transaction' took place in that state, and the laws of this state relating to the transaction of business by corporations in this state have no bearing upon that transaction. When thereafter the corporation came into this state and qualified to transact business under the corporate laws of this state, it brought with it the assignment of this chose in action, which was an asset—a property right subject to the laws of property in this state. That the corporation had the legal capacity to sue in an effort to enforce this property right in a trial before a jury, and that the superior court had jurisdiction to hear and determine the cause, is manifest." Balconades Ballroom, Inc. vs. Superior Court, etc., 293 P. 631. Edward A. Cunha and Harry I. Stafford, both of San Francisco, for petitioner. Taaffe & Taaffe, of San Francisco, for respondent.

Florida.

Municipal license tax on local office of foreign corporation engaged in interstate commerce only in state held unlawful interference with such commerce. A Miami, Florida, ordinance provides for a $25 license fee for every business, etc., engaged in, in any building, etc., within the city. Petitioner here was a "branch sales manager" of an Illinois corporation having its principal place of business in Indiana; he was in charge of a two-room office in Miami equipped with desks, telephones, etc.; there were office employees and salesmen working under his direction; samples of the company's products were kept on hand at the office (the company was engaged in the manufacture and sale of wearing apparel direct to customers on orders solicited by the petitioner and his fellow employees, the goods being shipped from without the state to Florida customers, C. O. D.); he was called on to pay the license fee; he refused to pay; he was arrested and convicted of violating the ordinance; his conviction was affirmed by a circuit court; the Florida Supreme Court quashes the judgment of affirmation. The court says: "The business actually carried on by petitioner in the instant case was exclusively interstate commerce.

The tax sought to be imposed upon the office or business was one upon a means or occupation of carrying on interstate commerce," and so, is not to be imposed. The opinion is quite long and many cases are cited, quoted from, and discussed. Myers vs. City of Miami, 131 So. 375. Shutts & Bowen, J. F. McPherson, and Herbert S. Sawyer, all of Miami, for petitioner. J. W. Watson, of Miami, for respondent.

Indiana.

On "doing business" by a foreign corporation; isolated transactions; acquirement of acreage and the operation thereof. The original opinion here was digested in THE CORPORATION JOURNAL for February, 1929, page 350; 163 N. E. 517 (see also 165 N. E. 763). There has been a superseding opinion—but without change for present purposes. It is sufficient to quote from the prior digest: "The Florida corporation, organized to buy and sell and lease real estate, to collect rents, and to cultivate lands for agricultural purposes, took possession of the Indiana acreage, rented some of it, and made hay and otherwise cultivated other portions. One defense set up is the doing of business in Indiana by an unqualified foreign corporation. It is answered that the contract sued on is a single isolated contract. The Appellate Court of Indiana, reversing the judgment of the court below for the corporation and granting a new trial (there was a counter claim), holds the contract void, saying that the acquirement of the land and the operation thereof is a continuing act and that 'if appellee was not transacting business within the state, then it must be that farming is not a business.'" Burroughs vs. Southern Colonization Co., 173 N. E. 716. L. Darrow, of La Porte, for appellant. O. W. Nichols, of Knox, for appellee.

Louisiana.

Transaction consummated without state by qualified foreign corporation is held to be connected with business within state and so action against the corporation in state court will lie. Here a sale of certain properties, real and personal, located in Louisiana, of a Delaware corporation to another Delaware corporation, each qualified to do and, at the time, doing business in Louisiana, was consummated in New York. The vendee corporation had duly appointed an agent within Louisiana for service of process on it as directed by the state law which provides that the agent's authority to accept process to summon the corporation shall continue "as long as any liability remains outstanding against said corporation growing out of or connected with the business done by said corporation in this state." In a suit brought in a Louisiana district court to recover an amount alleged to be due on account of the purchase price, service having been made on the vendee's statutory agent, the court dismissed on defendant's exception to its jurisdiction on the ground that the service was invalid, or, in other words, that if the Act in question is to be construed as conferring jurisdiction on the local courts under the circumstances here existent it violates the Fourteenth Amendment of the Federal Constitution in that

it denies due process of law. The Supreme Court of Louisiana reverses, holding that the state courts have jurisdiction and remands the cause for trial on the merits. Reciting that the property was acquired by the purchaser for use in the state in connection with its regular business there, and, in fact, was so used, the court says: "The term 'the business done by said corporation in this state' does not mean the single transaction by which the liability was incurred. It means the business done generally by the corporation in this state, and by the doing of which the corporation is deemed to be in the state, under the protection of the laws of the state and subject to the jurisdiction of the courts of the state." The court holds that to construe the statute, as it does, as giving to the Louisiana courts jurisdiction of the defendant is not to deny to it due process of law. Numerous local cases are cited —some in support; others, seemingly contra, are differentiated. United Oil & Natural Gas Products Corporation vs. United Carbon Co., 131 So. 52. Shotwell & Brown, of Monroe, for appellant. McHenry, Montgomery, Lamkin & Lamkin, of Monroe, for appellee.

Michigan.

What constitutes "doing business"; Suing on contract entered into in another state. Here, the plaintiff manufacturer, a corporation foreign to Michigan and not licensed to do business in that state, entered into a contract in Illinois with a subcontractor on a building construction project in Michigan to supply and install certain folding partitions. The installation having been completed payment difficulties arose; the principal contractor then guaranteed payment; action is by the manufacturer against the guarantor to recover the purchase price of the partitions. The defense was that the plaintiff, a foreign corporation, not having qualified to do business in Michigan could not make a valid contract in Michigan. The Supreme Court of Michigan affirming the judgment below for the plaintiff says that the contract, having been consummated in Illinois "was not in violation of the Michigan statute regulating foreign corporations doing business in Michigan. It was valid between the original parties, and the defendant bound itself by its written guarantee of payment." It is further held, several supporting cases being cited and quoted from, that because of the intricate nature of the partitions ("specialties") the installation was appropriate and essential to the sale—the sale could not be made unless there was an agreement to install—and so that the carrying out of the contract did not involve the "doing of business" in Michigan. Richards-Wilcox Mfg. Co. vs. Talbot & Meier, 233 N. W. 437. Frank C. Cook and John P. O'Hara, both of Detroit (A. L. Baumann, of Detroit, of counsel), for appellant. Anderson, Wilcox, Lacy & Lawson, of Detroit (Earl L. Shimer and Helen W. Miller, both of Detroit, of counsel), for appellee.

New York.

Notice of lien must state principal place of business within state if lienor is a foreign corporation. Action to foreclose a mechanic's

lien. One of the lienors is an Ohio corporation authorized to do business in New York; it has duly designated (filed with the Secretary of State) an address in New York City as the place where its office within the state is located; at another location in New York City it has a warehouse, in charge of a "manager," "where large quantities of goods are held for sale and delivery." The New York Lien Law provides that "The notice of lien shall state: 1. * * * if the lienor is * * * a foreign corporation, its principal place of business within the state." The notice of lien here states that the principal office and place of business are in Cleveland, Ohio, no reference being made to an office or place of business in New York. The New York Supreme Court, Albany County, says that "the failure of the Arco Company to state in its notice of lien its principal place of business within the State, or any place of business [therein], was a failure to bring itself within the terms of the statute, and, therefore, no lien arose in its behalf." John Roshirt, Inc., vs. Rosenstock et al., 138 N. Y. Misc. 515. Wiswall, Walton, Wood & MacAffer, of Albany, for plaintiff. T. J. Burke, for defendant owner. Porter L. Merriman, of Albany, for defendant Arco Company.

Virginia.

Foreign express company denied right to engage in intrastate commerce. In THE CORPORATION JOURNAL for February, 1930, the following quoted matter appears under the caption here given. "The Virginia constitution provides that no foreign corporation may be authorized to carry on in the state the business, or to exercise any of the powers or functions, of a public service corporation. The appellant in error, a Delaware corporation engaged in the express business, sought authority to carry on its business in intrastate commerce in Virginia. The Corporation Commission denied the certificate. On appeal the Supreme Court of Virginia affirms the commission's order. Among other contentions the company asserted that to deny it the right to engage in intrastate business in Virginia over the lines of railroads specified would be in violation of the Fourteenth Amendment to the Federal Constitution as a denial of the equal protection of the laws. The court reiterates the proposition that (quoting from Pembina Con. Silver Mining, etc., Co. vs. Pennsylvania, 125 U. S. 189): 'The states may, therefore, require for the admission within their limits of the corporations of other states, or of any number of them, such conditions as they may choose, without acting in conflict with the concluding provision of the first section of the Fourteenth Amendment.' The court suggests a way out—the organization of a domestic corporation with stock ownership in the foreign company." The United States Supreme Court affirms, February 2, 1931. Mr. Justice Holmes says, in the course of the extremely short opinion: "As suggested by the State Court the difficulties created by the Constitution of Virginia probably will not prove hard to overcome when it is found that they must be met." Railway Express Agency, Inc. vs. Commonwealth of Virginia, Docket No. 55—October Term, 1930.

Wisconsin.

On what constitutes "doing business". Here, goods were sold by a manufacturer, a corporation foreign to Wisconsin and not licensed to do business in that state, to a retailer in Wisconsin under an agency contract under the terms of which unsold goods were returnable to the seller at the termination of the contract period, for credit. By agreement the retailer ceased to be one of the manufacturer's dealers, another retailer contracted to become a dealer in his place, the manufacturer's goods in the hands of the former (it being undisputed that title to such goods was then in him) were turned over to the latter, and the latter by the terms of the agreement and of his contract with the manufacturer assuming liability to the manufacturer for the goods turned over to him. Action is against a surety on the second dealer's contract on account of the unpaid balance on the goods taken over as referred to above. On rehearing the Supreme Court of Wisconsin affirms the judgment below for the plaintiff manufacturer. It was urged (there were numerous other defenses advanced) that the trial court erred in permitting plaintiff to recover because the transaction was in violation of Chapter 226, Wisc. Stats., relating to transaction of business by foreign corporations. The court says that the plaintiff merely consented to a novation by the terms of which it accepted the second dealer as its debtor instead of the first dealer and that "such a transaction does not fall within the condemnation of the statute." J. R. Watkins Co. vs. Beyer, 233 N. W. 442. Bundy, Beach & Holland, of Eau Claire, for appellant. D. E. Tawney and J. M. George, both of Winona, Minn., and Linderman, Ramsdell & King, of Eau Claire, for respondent.

Taxation

California.

Foreign corporation having paid license tax under statute subsequently declared to be unconstitutional may sue state to recover the amount thereof though such tax was not paid under specific protest. Action here is to recover corporation taxes paid to the state under the Corporation License Tax Act (Stats. 1915, p. 422) as amended. Plaintiff is the assignee of certain foreign corporations who paid license taxes for the years 1926 and 1927 under the Act. The statute was declared to be unconstitutional in the case of Perkins vs. Jordan, 200 Cal. 668, and taxes paid thereunder were held in Welsbach vs. State, 206 Cal. 552, 275 P. 436 (THE CORPORATION JOURNAL for May, 1929, page 422) to be recoverable. The lower court allowed recovery of all of the franchise taxes paid under protest but denied recovery of all paid without protest. The California District Court of Appeals, First Appellate District, reverses that portion of the judgment denying recovery of the taxes paid without protest saying that the penalties under the act for non-payment were so drastic as to make it obvious that payment was not voluntary. "Payment is never voluntary

when made under coercion and duress." "When payment is made under compulsion no protest is necessary in the absence of a special statute to the contrary, and here there is nothing in the permissive statute relating to the subject, the statute being silent on the question." Whyte vs. State et al., 294, P. 417. Willard P. Smith, of San Francisco, for appellant. U. S. Webb, Attorney General, and Alberta Belford, Deputy Attorney General, for respondents.

New York.

Stocks and bonds are intangible property for apportionment purposes in determining amount of mortgage subject to recording tax. The New York law provides for a mortgage recording tax of 50c per $100 of value of the debt secured by the mortgage. When the real property covered by a mortgage lies partly within and partly without the state the amount of mortgage subject to the tax is to be determined by apportionment by applying to the mortgage a ratio equal to the ratio which the net value of the mortgaged property within the state bears to the net value of the entire mortgaged property. In determining net values tangible property only, real and personal, is to be considered. The wording of the law is confusing. In the instant case the corporate trust mortgages in question cover real estate, of slight value, comparatively, located in New York state and personal property of great value, consisting of stocks and bonds of subsidiary corporations the stocks and bonds being, at all times pertinent, without the state. Both the relator and the recording officer in good faith treated the stock (at least) as tangible personal property to the end of apportioning the mortgage to determine the amount thereof subject to the tax. The Tax Commission determined that the rule of apportionment was inapplicable because the mortgage covered no tangible real or personal property situated outside of New York. The Appellate Division of the New York Supreme Court held that the apportionment rule applies when, as here, the properties covered by the mortgage consist of real estate lying in New York and of stocks and bonds of subsidiaries whose properties are outside of New York. The Court of Appeals reverses saying "The relator has no real property without the state; therefore, this apportionment provision did not apply to it." The court continues, saying: "Moreover, the personal property of the relator without the state consisted entirely of stocks and bonds; these are not tangible property." The court further says, on the question of whether or not, for purposes of the tax, stock is tangible property, that "the question was none too easy of solution [in view of various decisions in Federal and state courts] * * * so that the recording officer and the relator may well be pardoned for considering them such in this case"—and directs that the penalties be remitted. Terminals & Transportation Corporation of America vs. State Tax Commission, 254 N. Y. 401, 173 N. E. 562. Hamilton Ward, Atty. Gen. (Henry S. Manley, of Delmar, of counsel), for appellant. Ansley W. Sawyer and Walter C. Lindsay, both of Buffalo, for respondent.

Some Important Matters for March and April

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALABAMA—Annual Franchise Tax Return due between January 1 and March 15.—Domestic and Foreign Corporations.

Annual Franchise Tax payable April 1, but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

ARIZONA—Annual statement of Mining Companies due between January 1 and April 1.—Domestic and Foreign Corporations engaged in mining of any kind.

ARKANSAS—Income Tax Return due on or before May 15.—Domestic and Foreign Corporations.

CALIFORNIA—Franchise (Income) Tax Return and Payment of one-half of tax due on or before March 15.—Domestic and Foreign Corps.

COLORADO—Annual License Tax due on or before May 1.—Domestic and Foreign Corporations.

CONNECTICUT—Income Tax Return due on or before April 1.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due after April 1 and before July 1. —Domestic Corporations.

Return of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

DOMINION OF CANADA—Annual Summary due between April 1 and June 1.—Domestic companies.

Annual Income Tax Return due on or before April 30.—Domestic and Foreign Corporations.

Return of Employers and return of dividends for income tax purposes due on or before March 31.—Domestic and Foreign Corps.

GEORGIA—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

KANSAS—Annual Report and Franchise Tax due between January 1 and March 31.—Domestic and Foreign Corporations.

MARYLAND—Annual Report due on or before March 15.—Domestic and Foreign Corporations.

MASSACHUSETTS—Excise Tax Return due not later than April 10.—Domestic and Foreign Corporations.

MISSISSIPPI—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

MISSOURI—Annual Return of Net Income due on or before March 15.—Domestic and Foreign Corporations.

MONTANA—Annual Report due within two months from April 1.—Foreign Corporations.

NEBRASKA—Statement to Tax Commissioner due on or before April 15. —Foreign Corporations.

NEVADA—Annual Statement of Business due not later than month of March.—Foreign Corporations.

NEW HAMPSHIRE—Annual Return due on or before April 1.—Domestic and Foreign Corporations.

Franchise tax due on or before April 1.—Domestic Corporations.

NEW JERSEY—Annual Tax Return due on or before first Tuesday of May.—Domestic Corporations.

NEW YORK—Annual Franchise Tax (under Art. 9 of New York Tax Law) payable on or before April 1.—Domestic and Foreign Real Estate Corporations and Holding Corporations.

Annual Return of information at source due on or before April 15.—Domestic and Foreign Corporations.

NORTH CAROLINA—Income Tax Return and return of information due on or before March 15.—Domestic and Foreign Corporations.

Annual Report due on or before May 1.—Domestic Corporations.

NORTH DAKOTA—Annual Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

OHIO—Annual Report due between January 1 and March 31.—Domestic and Foreign Corporations.

OREGON—Excise (Income) Tax Return due on or before March 31.—Domestic and Foreign Corporations.

PENNSYLVANIA—Capital Stock and Corporate Loan Report due on or before March 15.—Domestic and Foreign Corporations.

Bonus Report due on or before March 15.—Foreign Corporations.

RHODE ISLAND—Semi-Annual Report to Chief Factory Inspector due in April and October.—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

TENNESSEE—Annual Return of Supplemental Information due on or before March 15.—Domestic and Foreign Corporations.

Annual Excise Tax Report due on or before May 1.—Domestic and Foreign Corporations.

TEXAS—Annual Franchise Tax Report due between January 1 and March 15.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

UNITED STATES—Annual Return of Net Income due on or before March 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

VERMONT—Extension of Certificate of Authority due on or before April 1.—Foreign Corporations.

List of Stockholders due on or before April 5.—Domestic and Foreign Corporations.

VIRGINIA—Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

WEST VIRGINIA—Annual Report due in April.—Foreign Corporations.

WISCONSIN—Annual Report due between January 1 and April 1.—Domestic and Foreign Corporations.

Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any one of which it is always glad to send without charge to readers of The Journal:

Incorporation in Canada Under the Dominion Act. Explains the procedure for incorporation of Canadian companies, the requirements, taxes, maintenance of office, etc., and all the special features of the Dominion Companies Act. Attorneys with a client who may, because of tariff barriers, be considering the organization of a Canadian company to conduct the company's Canadian or export business, will find this pamphlet extremely useful.

When Corporations Cross the Line. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

What Constitutes Doing Business. (Revised to April, 1930). A 208-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them also accessible either by case name or topic.

Questionnaire on Business Outside State of Organization. This is a form for attorney's use in determining when a corporation should be qualified. The questions are those which will usually bring out the points necessary to be considered.

Why a Transfer Agent? The question of why corporations, even those of small capitalization or with inactive or closely held stock, are safer when their stock records are in the hands of an experienced transfer agent is answered in this pamphlet by actual incidents from the experiences of different corporations.

Why Corporations Leave Home. This is an informal discussion, from the business man's point of view and in layman's language, of why so many business companies are organized under the laws of Delaware instead of in their home states. While primarily for laymen, lawyers also may find this pamphlet useful when considering the matter of what state to choose for incorporation of a client's business.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

Special Reports. When cases are decided that seem to be of some particular interest or significance in connection with the matter of doing business by foreign corporations, The Corporation Trust Company sometimes issues one of these special reports. One on the Southwest Company case is now available.

Transfer Requirements Chart. This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfer are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.